

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**ATTORNEYS AT LAW****RALEIGH, NORTH CAROLINA****DOCKET FILE COPY ORIGINAL**

L.P. McLENDON, JR.
 HUBERT HUMPHREY
 EDGAR B. FISHER, JR.
 W. ERWIN FULLER, JR.
 JAMES T. WILLIAMS, JR.
 WADE H. HARGROVE
 M. DANIEL McGINN
 MICHAEL D. MEEKER
 WILLIAM C. MENARY
 EDWARD C. WINSLOW III
 HOWARD L. WILLIAMS
 GEORGE W. HOUSE
 WILLIAM D.H. CARY
 REID L. PHILLIPS
 ROBERT A. SINGER
 JOHN H. SMALL
 RANDALL A. UNDERWOOD
 S. LEIGH RODENBOUGH IV
 WILLIAM G. ROSS, JR.
 MARK J. FRANK
 JILL R. WILSON
 MARC D. BISHOP
 J.M.W. PHILLIPS, JR.
 MACK SPERLING
 JEFFREY E. OLEYNIK
 MARK DAVIDSON
 MELISSA H. WEAVER
 JAMES R. SAINTSING
 JOHN W. ORMAND III
 ROBERT J. KING II
 STEVEN J. LEVITAS

V. RANDALL TINSLEY
 JOHN R. ARCHAMBAULT
 S. KYLE WOOSLEY
 WILLIAM C. SCOTT
 DANIEL M. SROKA
 FORREST W. CAMPBELL, JR.
 MARCUS W. TRATHEN
 JEAN C. BROOKS
 ANNE C. BRENNAN
 ELLEN P. HAMRICK
 ALLISON M. GRIMM
 JAMES C. ADAMS, II
 ELIZABETH S. BREWINGTON
 JOHN K. EASON
 H. ARTHUR BOLICK II
 NATASHA RAYM MARCUS
 JOHN M. CROSS, JR.
 WINSTON P. LLOYD
 JENNIFER K. VAN ZANT
 W. KEARNS DAVIS, JR.
 TRACEY BANKS COAN
 DAVID W. SAR
 KATHLEEN M. THORNTON
 BRIAN McMILLAN
 JENNIFER L. BOLICK
 DAVID KUSHNER
 DEREK J. ALLEN
 ELIZABETH V. LaFOLLETTE
 ERIN L. ROBERTS
 GINGER S. SHIELDS

MAILING ADDRESS
 POST OFFICE BOX 1800
 RALEIGH, N.C. 27602

OFFICE ADDRESS
 SUITE 1600
 FIRST UNION CAPITOL CENTER
 150 FAYETTEVILLE STREET MALL
 RALEIGH, N.C. 27601

TELEPHONE 919-839-0300
 FACSIMILE 919-839-0304

RECEIVED**OCT 30 1997**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AUBREY L. BROOKS (1872-1956)
 W.H. HOLDERNESS (1904-1965)
 L.P. McLENDON (1980-1988)
 KENNETH M. BRIM (1998-1974)
 C.T. LEONARD, JR. (1929-1983)
 CLAUDE C. PIERCE (1913-1988)
 THORNTON H. BROOKS (1912-1988)
 G. NEIL DANIELS (1911-1997)

GREENSBORO OFFICE
 2000 RENAISSANCE PLAZA
 230 NORTH ELM STREET
 GREENSBORO, N.C. 27401

WASHINGTON OFFICE
 2000 L STREET N.W., SUITE 200
 WASHINGTON, D.C. 20036

October 30, 1997

BY HAND-DELIVERY

Mr. William F. Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, N.W., Stop Code 1170
 Washington, D.C. 20554

Re: **MM Docket No. 97-182**

Dear Mr. Caton:

Transmitted herewith by facsimile are an original and five (5) copies of the Joint Comments of the North Carolina and Virginia Associations of Broadcasters in MM Docket No. 97-182.

If any questions should arise in connection with your consideration of this matter, please contact this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
 HUMPHREY & LEONARD, L.L.P.

Mark J. Frank
 Counsel to The North Carolina and
 Virginia Associations of Broadcasters

Enclosures
 MJP/bh

No. of Copies rec'd
 List ABCDE

01 57

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting.)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

RECEIVED

OCT 30 1997

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**JOINT COMMENTS OF THE
NORTH CAROLINA ASSOCIATION OF BROADCASTERS AND
THE VIRGINIA ASSOCIATION OF BROADCASTERS**

The North Carolina Association of Broadcasters ("NCAB") and the Virginia Association of Broadcasters ("VAB"), by their attorneys and pursuant to 47 C.F.R. §§ 1.415, 1.419, hereby jointly file the following comments in response to the *Notice of Proposed Rule Making*, FCC 97-296 (Released: August 19, 1997) ("*Notice*"), issued in the above-captioned proceeding.

I.

INTRODUCTION

NCAB and VAB (collectively, the "Associations") represent radio and television broadcasters in North Carolina and Virginia. The Associations submit these comments to urge the Commission to adopt the proposed preemption rule attached as Appendix B to the *Notice*. The proposed rule would preempt local zoning and land use restrictions on the placement, construction and modification of broadcast station transmission facilities under certain limited circumstances.

It has been the experience of many of the Associations' members that state and local action and inaction often result in needless delay in the construction of FCC-approved broadcast facilities.

The conversion of television facilities to DTV will only create more problems of this nature for broadcasters. In the end, a patchwork of differing regulations from the federal, state and local levels serves only to obstruct the federal effort to allow the broadcast industry to promptly convert to DTV. To address this problem and to ensure that broadcasters can meet the Commission's ambitious DTV timetable, the Commission should act to remove one of the primary obstacles to its plans -- state and local government processes which infringe on the FCC's authority over communications and serve to frustrate its goals. Without appropriate Commission action, the prompt roll-out of digital television will be stymied by local and state authorities who impose procedural and other burdens on broadcast facilities construction.

II.

STATE AND LOCAL REGULATION OF SUBJECTS THAT OVERLAP WITH FEDERAL REGULATIONS SHOULD BE PREEMPTED

In the *Notice*, the Commission solicited comment on whether it should "focus on actions state and local government would be preempted from taking or what state or local authority would be preempted by failure to act within a specified time period."¹ In order to ensure that state and local governments do not duplicate FCC regulation of the broadcast industry, the FCC should do both.

The FCC is solely responsible for licensing and overseeing radio and television broadcasting throughout the United States. In this role, the Commission must promulgate rules and articulate policy to be carried out nationwide in order to accomplish the federal goal of ensuring a fair allocation of broadcast services serving the public interest. In carrying out these responsibilities, the FCC has unique expertise which informs its decisions regarding interference to telecommunications services and devices, setting standards for measuring the effects of radiofrequency ("RF") radiation,

¹ *Notice*, at ¶ 18.

and establishing guidelines, in cooperation with the Federal Aviation Administration ("FAA"), regarding the marking and lighting of broadcast towers. When local and state officials attempt to duplicate this regulation -- even where this effort is disguised as "land use" regulation -- the federal regulatory scheme established by Congress is frustrated.

In the *Notice*, the Commission asked for comment concerning the "circumstances . . . in which it [would be] appropriate for the Commission to preempt state and local regulation of the siting or construction of transmission facilities."² Certain substantive regulations and restrictions of local and state authorities must be preempted in order to fulfill the comprehensive regulatory schemes developed by the Commission in its effort to foster a free, over-the-air broadcasting system that serves the public interest. Only issues that are subject to comprehensive Commission regulation should be subject to preemption, and the proposed rule reasonably limits such preemption to three primary areas.

Specifically, the proposed rule provides that regulation of the environmental effects of RF radiation, interference with telecommunications signals, and requirements for marking and lighting towers be areas subject to preemption. These are issues which are often utilized by state and local governments to restrict the siting and construction of broadcast towers, yet the Commission has established rules and guidelines in these areas which express the national policy. Each rule is comprehensive,³ and should not be the subject of inconsistent state or local regulations.

² *Id.*, at ¶ 22.

³ *Notice*, at ¶ 4. See, e.g., 47 C.F.R. §§ 73.209, 73.318, 73.612, 73.614 (interference regulations); Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, *Report and Order*, ET Docket 93-62, FCC 93-326 (Released: August 1, 1996) ("*R&O*"), *First Memorandum Opinion and Order*, FCC 96-487 (Released: December 24, 1996) ("*First MO&O*"), *Second Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-303 (Released: August 25, 1997) ("*Second MO&O*") (RF emissions); 47 C.F.R. § 17.21 *et seq.* (specifications for obstruction marking and lighting of antenna structures).

When approving a construction permit for new or modified station operation, the Commission requires the applicant to conform to its rules regarding interference caused to other broadcast stations as well as its policies regarding blanketing interference and interference to consumer electronic devices.⁴ This is an area uniquely within the expertise of the Commission. When local authorities second guess -- or adopt regulations which conflict with -- the Commission's judgments in this area, the Commission's determination that the new or modified broadcast facility would serve the public interest is frustrated and mooted.⁵

Similarly, the Commission has issued revised rules enforcing its policy concerning the environmental effects of RF radiation.⁶ As the Commission stated when adopting its guidelines: "We believe our decisions provide a proper balance between the need to protect the public and workers from exposure to potentially harmful RF electromagnetic fields and the requirement that industry be allowed to provide telecommunications services to the public in the most efficient and practical manner possible."⁷ These guidelines are delineated in OET Bulletin No. 65.

⁴ See, e.g., FCC Form 301, Section V (Broadcast Engineering Data); *Educational Information Corporation*, 6 F.C.C. Rcd. 2207 (1996) (analyzing a station's modification proposal in regard to interference).

⁵ The degree to which state and local authorities may attempt to regulate concerning issues within the jurisdiction of the FCC is well demonstrated by *Entertainment Communications, Inc.*, FCC 94-56 (Released: March 22, 1994). In that case, an applicant for an FM license was delayed by a complaint from a local citizen who claimed that RF radiation from the FM tower interfered with his television remote control. *Id.* at ¶ 3. The FCC quickly dismissed his concern noting that the station operated at 92.5 MHz and the remote control between 300 GHz and 500 THz. *Id.*, at ¶ 6. Nevertheless, it is fair to ask whether a local planning commission faced with the decision whether to approve the siting of an FM tower would make a similar, informed decision in the face of such an absurd complaint from a local, prominent citizen. See, also, *Butters v. Hauser*, 867 P.2d 953 (Idaho 1993) (local government questions "need" for improved FM service).

⁶ See *Report and Order*.

⁷ *Second MO&O*, at ¶ 2.

Broadcasters seeking to construct new broadcast facilities are often faced with complaints about the possible detrimental health of the facilities. Such complaints can result in unreasonable delay and unreasonable local restrictions on the use of the tower. This is the case even though the tower is shown to be in compliance with the Commission's guidelines which were developed in conjunction with the Occupational Safety and Health Administration ("OSHA"). Through the vivid examples they cite, the Petitioners demonstrate how these local fears can result in the frustration of FCC decisions regarding the proper use of the electromagnetic spectrum.⁸ The undersigned counsel have personally encountered such unfounded local fears when representing NCAB and VAB members in special use permit proceedings in North Carolina and Virginia.

As the Commission is well-aware, such state and local restrictions sometimes have nothing to do with the merits of a particular application, but instead can only be explained by reference to extraneous political or personal factors. To cite just one example, Capitol Broadcasting Company, a pioneer in digital television and the first station in the nation to broadcast an experimental digital signal, has for three months been unable to obtain the necessary approval (or even a hearing) from the local city council to move a 300-foot studio transmitter link tower located at its studio site from one side of the studio building to another, a distance of only approximately 170 feet. The city appears to be refusing to consider Capitol's application because of an unrelated legal action involving Capitol's news operation.⁹

Attached as Exhibit C are the Comments of Mid Atlantic Network, Inc. ("Mid Atlantic"), licensee of station WINC-FM, Winchester, Virginia. While seeking the approval of Fauquier

⁸ *Petition*, at pp. 12-14.

⁹ See generally Declaration of Michael D. Hill, attached hereto as Exhibit A. See also Affidavit of David Lasley attached hereto as Exhibit B.

County to construct an auxiliary tower, a local property owners association objected, asserting that “the cancer rate in the resort [area] was higher than normal and *that excess RF radiation caused this cancer.*” See Exhibit C (emphasis added). Although these assertions proved to be groundless, the County nevertheless imposed restrictions on the use of the tower, which severely limits the functionality of the tower. For example, the County limited the number of antennas to four, regardless of whether they emitted RF radiation, and prohibited satellite dishes entirely. Further, the use of the tower was restricted to use “for back up purposes only, or if used as primary, the existing tower to be for back up only.” This example demonstrates the inability of local authorities to make rational judgments concerning RF radiation. Certainly, the FCC would never limit the number of *receiving* antennas to address an alleged RF radiation problem. Moreover, no restrictions should be imposed when, as in this case, the RF radiation guidelines are met. As a result of the lack of federal preemption, Mid Atlantic incurred delay and expense in constructing a tower that met with the Commission’s determination of serving the public interest. This example reflects the fact that, as a practical matter, no elected public official can afford to be perceived as insensitive to a constituent’s concern about a health or safety issue, even if the concern is plainly without any factual basis.

III.

TIME CONSTRAINTS ON STATE AND LOCAL GOVERNMENT ACTION ARE NECESSARY TO ENSURE THAT THE COMMISSION’S POLICIES ARE SERVED

A. The Proposed Time Limits for State and Local Action Serve the Commission’s Desire to Promptly Roll-Out DTV

In the *Notice*, the Commission asks for comment on the procedural framework proposed by the Petitioners, specifically, whether certain time limits upon the local approval of Commission

authorized construction are reasonable and necessary.¹⁰ Specifically, the Commission is concerned with the aggressive roll-out schedule for DTV.¹¹

The Associations believe strongly that time limits are necessary to ensure a timely transition to digital television, and that these constraints should be applied uniformly to all broadcasting services, regardless of market size or connection to the DTV process.

The examples of problems and delays encountered by local broadcasters cited in the *Petition*, as well as in these Comments, have occurred prior to the implementation of DTV. In these cases, the usual construction period of 18 months was applicable. Although construction periods for DTV are longer -- extending from issuance until the deadline for the facilities to be up and operating -- it is expected that other delays will be inevitable. As noted in the *Petition*, as many as 1000 of the 1400 television towers will need to be modified or replaced to accommodate DTV between now and 2003.¹² In addition, many of the 1320 FM antennas that are co-located with television antennas may be displaced because of the added load of new DTV antennas on the currently over-burdened towers.¹³

One of the primary goals of the DTV proceeding was to "foster[] expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television while taking account of consumer investment in [analog] television sets."¹⁴ The Commission must

¹⁰ *Notice*, at ¶ 23.

¹¹ *Id.*, at ¶¶ 19, 23.

¹² *Petition*, at p. 6.

¹³ *Id.*

¹⁴ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, FCC 97-116 (Released: April 21, 1997), at ¶ 4 (hereinafter, *DTV Fifth R&O*).

establish short deadlines for local and state review of applications to construct broadcast towers and related facilities to ensure that its goals can be met. If the Commission is forced to revise its DTV schedule, the market will lose confidence in the Commission's ability to oversee a swift transition. As the Commission has noted, a timely transition is necessary to convince consumers to purchase DTV sets.¹⁵ The Commission cannot control the sales of DTV sets or the number of available crews to construct the new towers. However, the Commission does have the power to eliminate one potential obstacle to its ambitious DTV goals -- the obstruction and delay caused by non-federal authorities. If the Commission fails to secure compliance with its DTV schedule, the transition would need to be extended since consumers and set manufacturers would not have the confidence to make the necessary investments in DTV. If analog broadcasting is forced to continue, the reclamation and auctioning of spectrum is pushed further into the future, preventing the development of other new communications services and possibly effecting federal budget projections.

The Petitioners have recommended time limits for local action ranging from 21 to 45 days.¹⁶ These time limits would be consistent with the Commission's own effort to act quickly to approve the grant of construction permit applications for DTV facilities. Acknowledging the importance of its DTV efforts and the need to avoid delay, the Commission has drastically streamlined its own procedures for obtaining a construction permit.¹⁷ Indeed, the Commission has made much of its efforts to expedite the grant of DTV applications. For example, the Commission was easily able to

¹⁵ *Id.*

¹⁶ *Notice*, at ¶ 6.

¹⁷ *Public Notice: Commission Details Application Filing Procedures for Digital Television (DTV)*, MM Docket No. 87-268 (Released: October 16, 1997), at p. 2.

grant two of three recently-filed DTV applications in less than 45 days.¹⁸ This demonstrates the importance to the Commission of expeditious action. No less should be required of state and local authorities. Thus, the 45 day maximum limit for local action is not unreasonable.

B. An Abbreviated Time Period For State and Local Decisions Is Necessary to Ensure That Construction of Non-DTV Related Facilities Can Be Completed within 18 Months of the Issuance of a Construction Permit

The *Notice* requests comment on whether any preemption rules that it might adopt should apply only to modification and construction of DTV facilities and FM stations displaced by DTV.¹⁹

Any preemption rules adopted should apply uniformly to all broadcast services whether or not there exists a relation to the DTV roll-out. Indeed, the complexity of determining whether a broadcast facility's construction request is directly or indirectly related to the DTV roll-out would be further fodder for delay by local governments. The factual record of problems related to the siting and modification of transmission facilities as set forth in the *Petition*, as well as the example in these Comments, all relate to pre-DTV circumstances. Such problems are just as illogical and just as contrary to the federal interest even though they do not relate to DTV. While the aggressive digital television schedule helps to underscore the need for preemption in certain areas, the problem faced by broadcasters from local and state attempts at regulation of telecommunications are not unique to DTV towers. Whether the issue is the relocation of an FM station displaced by DTV, or the siting

¹⁸ Three television stations licensed to KITV Hearst-Argyle Television, Inc. have recently received DTV licenses. KITV-DT filed its application on August 8, 1997, and the application was granted by the Commission on September 4, 1997. *See* File No. BPCDT-970808KE. KHVO-DT filed its application on August 21, 1997, and the application was granted by the Commission on September 3. *See* File No. BPCDT-970821KE. KMAU-DT filed its application on August 8, 1997, and the application was granted by the Commission on October 21. *See* File No. BPCDT-970808KF.

¹⁹ *Notice*, at ¶ 21.

of an AM or FM station tower unrelated to the DTV roll-out, non-federate authorities' ability to delay construction deemed by the FCC to be in the public interest still remains.

IV.

CONCLUSION

In light of the foregoing, NAB and VAB jointly and respectfully request that the Commission preempt state and local restrictions on the placement, construction and modification of broadcast transmission facilities as set forth in the proposed rule attached as Appendix B to the *Notice*.

Respectfully submitted, this the 30th day of October, 1997.

**NORTH CAROLINA ASSOCIATION
OF BROADCASTERS**

**VIRGINIA ASSOCIATION OF
BROADCASTERS**

By: 

Wade H. Hargrove

Mark J. Prak

Marcus W. Trathen

Winston P. Lloyd

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Post Office Box 1800

Suite 1600, First Union Capitol Center
Raleigh, North Carolina 27602

Their Attorneys

EXHIBIT A

Declaration of Michael D. Hill

DECLARATION

I, Michael D. Hill, hereby declare, under penalty of perjury, as follows:

1. I am employed as Vice President/General Counsel of Capitol Broadcasting Company, Inc. ("CBC").
2. CBC is the licensee of Television Station WRAL-TV (CBS) which operates on Channel 5 at Raleigh, North Carolina. In addition, CBC has an experimental authorization from the FCC which permits it to test a new digital television service, WRAL-HD, on Channel 32 at Raleigh.
3. CBC, in anticipation of the conversion to digital television, is in the process of enlarging its studio building and relocating its 300 foot self-supporting studio transmitter link tower ("STL tower") which is located at the WRAL studios on Western Boulevard in Raleigh. WRAL transmits its signal by microwave link from its studios in Raleigh to its 2,000 foot transmission tower located some 10.56 miles away at Auburn, North Carolina. CBC needs to relocate its existing STL tower some 170 feet from one side of its studio building to another in order to allow for expansion of the existing studio space.
4. CBC filed an application for a special use permit with the City of Raleigh on August 1, 1997. The application was complete and ready for action when filed. The City staff has recommended approval of the permit. CBC is not aware of any objection by any member of the public or any adjacent landowner. Indeed, the adjacent landowner located nearest to CBC has indicated it has no objection to the issuance of the permit. The special use permit application, a copy of which is attached as Exhibit 1, details CBC's compliance with the local ordinance governing such matters. Also attached as Exhibit 2 is a copy of the recommendation of the City Planning Director that the special use permit be granted.
5. The application was scheduled for hearing by the Raleigh City Council three times -- on September 2, 1997, September 16, 1997 and October 8, 1997. Each time, the City Council has refused to hold the required evidentiary hearing on the application.
6. Initially, it is my understanding that the City Attorney advised the Council that they should not hear the matter without a letter from CBC waiving any conflict of interest that might appear by virtue of the fact that four members of the City Council are defendants in a civil action alleging that certain members of the Council violated the state open meetings law in connection with an unrelated matter. CBC, along with the state broadcast association, state press association, the local daily newspaper and other local television stations, are parties plaintiff in that litigation. That case is presently pending before the North Carolina Court of Appeals. CBC promptly provided the requested letter waiving any conflict of interest. A copy of the letter is attached as Exhibit 3.

7. Nonetheless, and notwithstanding that CBC's application is complete and ready for action, the hearing has now been continued twice. I have been informed by representatives of the City staff, and believe that the members of the Council who are defendants in the unrelated litigation, have purported to justify this inaction by indicating that they will not provide CBC with a hearing on its application unless CBC secures from the other plaintiffs, in the unrelated case, a letter waiving any purported conflict of interest in the special use permit hearing -- despite the fact that none of those other plaintiffs have any interest whatsoever in the special use permit application. This request is without legal basis. It is unnecessary. Such a request may or may not be granted by the other plaintiffs to the unrelated litigation since they are business competitors of CBC's.

8. The relocation of CBC's STL tower has been delayed, and additional costs incurred, as a result of this attempt to impose additional, unnecessary requirements on CBC. If CBC is forced to resort to judicial action, CBC may be further delayed in its efforts to construct its new studio additions and renovations which are a part of the company's efforts to promptly roll out its new DTV facilities. In addition, CBC's costs will have been increased for no legitimate reason. CBC would, in my opinion, be entitled to a writ of mandamus from a court of competent jurisdiction to compel a hearing on its application.

9. As of this writing, CBC does not know when, or if, it will be granted a hearing on its special use permit application.

Executed under penalty of perjury this 30th day of October, 1997.



Michael D. Hill

EXHIBIT 1

**APPLICATION FOR
SPECIAL USE PERMIT**

**DEVELOPMENT PLANS REVIEW CENTER
CITY OF RALEIGH, NORTH CAROLINA**

P.O. BOX 590, RALEIGH, N.C. 27602 (919) 890-3642 FAX (919) 890-3590

**SPECIAL USE PERMIT APPLICATION
FOR PUBLIC HEARING
AND APPROVAL BY THE RALEIGH CITY COUNCIL****Section A
SUBMITTAL CHECKLIST**

PLEASE INCLUDE ALL OF THE FOLLOWING (CHECK OFF). If any information is missing from the application package, you may be asked to complete the application and re-submit on the next review cycle, so please check the list below carefully before you submit:

- ☐ **THREE SETS OF PRELIMINARY PLANS.** Maximum sheet size shall be 36" X 44". Plans must be to engineering scale (1" = 20', 1" = 30', etc.). Preliminary plans do not need an engineer or landscape architect's seal. Information to be shown on this plan should relate to the findings that the Council will need to make as noted in Section 10-2145 of the Raleigh City Code.
- ☐ **CITY OR COUNTY PROPERTY MAP** with parcels included in the site plan clearly marked. An excerpt of a property map is acceptable, but the map number must appear on the excerpt. This information is available from Wake County GIS or from the City of Raleigh Planning Department.
- ☐ **\$200 FILING FEE.** Check may be made out to the City of Raleigh. Payments may be made by cash or by check, but not by credit cards.
- ☐ **THREE COPIES OF THIS APPLICATION FORM** completed, signed, by the property owner or his / her agent, and notarized.

REQUIRED, BUT OFTEN MISSING INFORMATION. PLEASE MAKE SURE TO INCLUDE THE FOLLOWING:

- ☐ **VICINITY MAP.** Please include with plan documents.
- ☐ **CORRECT PARCEL IDENTIFICATION NUMBER (PIN).** Call Wake Co. Geographic Information Services at 856-6360, if there is ANY question about the parcel identifier. **THIS IS VERY IMPORTANT!** Incorrect PIN can cause the application to be rejected and re-submitted at the next submittal date.
- ☐ **OWNER SIGNATURE.** See Page 4 of this application. This signature must be notarized.
- ☐ **COMPLETE LIST OF PROPERTY OWNERS** adjacent to, in front of and behind the subject property, including properties across public rights-of-way. When unsure of whether to include adjacent properties, err on the side of including too many. If advertising is insufficient, the Special Use Permit may be invalidated.

Section B**SUMMARY INFORMATION (SHOW ON PLAN ALSO)**DEVELOPMENT NAME: WRAL-TVLOCATION: Western Boulevard

WAKE COUNTY PROPERTY IDENTIFICATION NUMBER(S):

P.I.N. 0793-07-68-6726

P.I.N. _____

P.I.N. _____

P.I.N. _____

P.I.N. _____

P.I.N. _____

P.I.N. _____

ZONING DISTRICT (Include Overlay Districts): Industrial-2OWNER / DEVELOPER: Capitol Broadcasting Company, Inc.ADDRESS: P.O. Box 12000 Raleigh, NC 27605TELEPHONE: 821-8500 FAX: 821-8554REPRESENTATIVE: Envirotek, Inc.ADDRESS: 1111 Oberlin Road, Raleigh, NC 27605TELEPHONE: 919-832-6658 FAX: 919-839-2255CONTACT PERSON Ron Hendricks PHONE _____ FAX _____

This request is for a special use permit for the following:

- _____ Additional floor area ratio (F.A.R.) allowances for office buildings in Office and Institutional-1 and 2 Districts.
- _____ Additional residential density in Office and Institutional-1, Office and Institutional-2, Shopping Center and Thoroughfare Districts.
- _____ Additional density, conversions of buildings to dwellings, net lot area reduction for dwellings, and housing within underlying industrial zoning districts in Downtown Residential Housing and Pedestrian Overlay Districts.
- _____ Correctional / Penal Facility
- _____ Hotel and motel in Office and Institutional-2 District.
- _____ Interim use in the Residential Business District within a redevelopment area.
- _____ More than eight (8) dwelling or rooming units per floor for multifamily and group housing structure, townhouse, congregate care and congregate living structures, life care communities and condominium developments.
- _____ Outdoor stadium, outdoor theater, outdoor race track, of more than two hundred and fifty (250) seats, and outdoor movie theatres.
- _____ Outdoor storage for inoperable vehicles
- _____ Outdoor storage yards
- _____ Parking facility - off-site, in a Residential Business District for special use residential housing projects.
- _____ Parking facility - off-site, for a residential institution in residential zoning districts.
- _____ Recreational use of a governmental entity and not for profit private recreational camp, in a primary reservoir watershed protection area.
- _____ Recreational use restricted to membership - not for profit, in a primary reservoir watershed protection area.
- _____ Shopping centers and shopping areas in Thoroughfare and Industrial-1 and 2 Districts that are located within four hundred (400) feet of any major thoroughfare or major access corridor.
- _____ Special Residential-30 residential density greater than twenty (20) dwelling units per net acre or three (3) or more dwelling units on a lot.
- ☒ Telecommunication tower.
- _____ Thoroughfare protective yard reductions for projects in Thoroughfare Districts traversed by more than one (1) mile of continuous public thoroughfare.

THE ABOVE-NAMED OWNERSHIP OF THIS PROPERTY IS EVIDENCED BY DEED FROM CBC Real Estate Company, Inc.AND RECORDED IN THE WAKE COUNTY REGISTRY, BOOK 3056 PAGE 069

The zoning ordinance imposes the following **SPECIFIC REQUIREMENTS** before a special use permit may be issued. . Please address each of the specific requirements noted in Code Section 10-2145 in the area below as it relates to your request. (The staff can assist the Applicant in listing the specific requirements); The Applicant should be prepared to demonstrate that, if the land is used in a manner consistent with the plans, specifications, and other information presented to City Council, the proposed use will comply with each of the following specific requirements:

See attached list of responses to the specific requirements.

PROPERTY ID NO.	PROPERTY OWNER	MAILING ADDRESS	ZIP CODE
0793.07-68-6383	CBC Real Estate Company Inc	P.O. Box 12000 Raleigh	27605
0793.07-68-7563	CBC Real Estate Company Inc	711 Hillsborough St. Raleigh	27603
0793.07-68-9600	Capitol Broadcasting Co. Inc dba WRAL-TV	P.O. Box 12000 Raleigh	27605
0793.07-68-9702	Ranson J. & Eula W. Fort	608 Nazareth St. Raleigh	27606
0793.07-68-8799	Annie Hicks	606 Nazareth St. Raleigh	27606
0793.07-68-1398	Roman Catholic Diocese c/o F. Joseph Gossman Bishop	300 Cardinal Gibbons Dr. Raleigh	27606
0794.19-50-7874	State of North Carolina	P.O. Box 10096 Raleigh	27605
0793.07-78-0787	Marion Grant & Mertie Batley	2525 Western Blvd. Raleigh	27606

**RESPONSE TO THE SPECIFIC REQUIREMENTS
OF CODE SECTION 10-2145 FOR THE
SPECIAL USE PERMIT REQUEST OF
CAPITOL BROADCASTING COMPANY INC.
FOR THE REPLACEMENT AND RELOCATION OF
THE EXISTING TELECOMMUNICATIONS TOWER AT WRAL-TV**

4 August 1997
CBCTVT

1. See Attachment A regarding radio/television reception.
2. The height of the tower is 300 feet, therefore it does not exceed the 510 foot limit in the ordinance.
3. See Attachment A regarding FAA lighting standards.
4. (a) A minimum (20) foot yard setback is provided (see Preliminary Site Layout).
(b) & (c) The tower will be located more than one hundred percent of the tower height (300') from any lot that is zoned or developed residential.
5. An eight (8) foot high fence will surround the base of the tower and guy wires. Currently, a chain link fence surrounds the area where the tower will be located. The existing fence has a height of six (6) feet in two (2) locations and eight (8) feet in another location. The fence will be appropriately screened with plant material to achieve the specified standard with three years (see Preliminary Site Layout).
6. A twenty (20) feet wide street protective yard will be located along a portion of the right-of-way of Western Boulevard (see Preliminary Site Layout). A transitional protective yard will be located along the property line that is shared with the residentially zoned properties to the east (PIN# 0793.07-68-8799, 0793.07-6E-9702 and 0793.07-68-9600). Along with these plantings, the existing development shall serve as a sufficient alternate method for the protective yards. (see Preliminary Site Layout)
7. See Attachment A
8. See Attachment A
9. The tower will not be located on property that is zoned residential.
10. The tower is not located within a Historic Overlay District or a Metro Park Protection Overlay District. There is not a similar tower which was constructed after the effective date of the current ordinance within 1000 feet of the new tower location.
11. The tower exceeds one hundred eighty (180) feet and is engineered and constructed to accommodate a minimum of two (2) additional telecommunication users. (See Attachment A)
12. This location is not in a residential district therefore the residential appearance provision for the buildings does not apply.
13. The associated buildings for the tower are not located in a residential district.
14. This special use request is strictly for the purpose of replacing and relocating the existing tower to a new location approximately 100 feet away. Therefore, the use will not change and will not be injurious to property or improvements in the affected area.

Attachment A
Capitol Broadcasting Company, Inc.
Replacement and Relocation of
Existing Telecommunications Tower at WRAL-TV

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, N.C. 27605

FRED BARBER
Vice President, Telephones
(919) 821-6575
Fax (919) 821-6585

July 31, 1997

City of Raleigh Planning Department
P. O. Box 590
Raleigh, NC 27602

Subject: Application for permit for relocation of WRAL-TV Studio Tower
on Western Boulevard. In response to questions numbers 1, 3, 7 and 8
of the Raleigh City Code for Telecommunications towers.

To Whom It May Concern:

This letter serves to state that the proposed tower for WRAL-TV News Operations will not interfere with normal radio frequencies and television transmissions in the vicinity.

In response to question number "3," this letter serves to state that tower lighting will not exceed the Federal Aviation Administration (FAA) minimum standards for red obstruction lighting systems contained in the Advisory Circular No. 70/7460-IF dated 27 September, 1978.

In response to question "7," the output power from the tower will not exceed federally approved levels for exposure to electronic magnetic force (EMF).

In response to question number "8," the WRAL tower is designed to accommodate additional users. Should the city of Raleigh decide to relocate its telecommunications systems, the proposed tower will be able to accommodate a reasonable number of facilities.

We understand that this letter is submitted to fulfill the requirements of the Raleigh City Code, that it becomes an official part of the tower application materials, and that it shall remain in the permanent files.

If you need additional information, please contact me at your earliest convenience.

Sincerely,



Fred Barber

FB:jg

I hereby certify that the information contained herein is true and complete; and I understand that if any item is found to be otherwise after evidentiary hearing before the City Council, that the action of the Council may be invalidated.

Signature of applicant

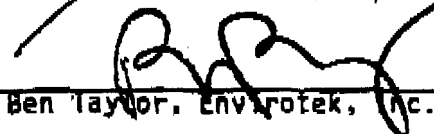


Date

8/1/97

John M. Brennan, Capitol Broadcasting Company, Inc.

Representative


Ben Taylor, Envirotek, Inc.


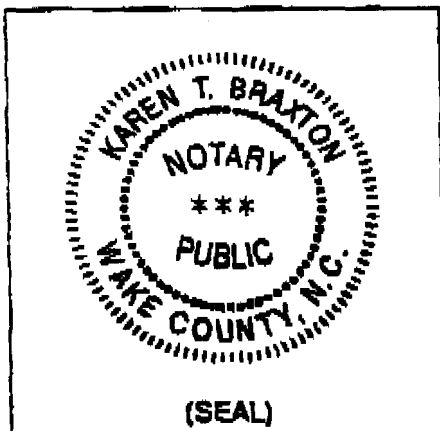
Date

1 AUG 97

STATE OF NORTH CAROLINA
COUNTY OF

I, Karen T. Braxton, a Notary Public do hereby certify that John M. Brennan
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

This the 1st day of August, 19 97.


Notary Public

My Commission Expires: May 4, 2000

EXHIBIT 2

**RECOMMENDATION OF THE
CITY PLANNING DIRECTOR**

CITY OF RALEIGH
INTER-OFFICE CORRESPONDENCE

TO: City Manager
FROM: Planning Director
SUBJECT: SU-10-97: Telecommunication Tower, WRAL Television Site
Agenda Item, September 2, 1997.

ROOM: 228

DATE: Aug 22, 1997

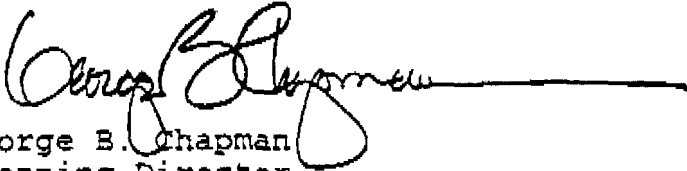
MESSAGE:

A Special Use Permit application has been received from the following:

SU-10-97: Telecommunication Tower, WRAL Television Site

Special Use Permit request from WRAL Television to construct a 300 foot lattice construction telecommunication tower on the property owned by WRAL Television/ Capitol Broadcasting Company with an existing land use of television broadcasting. Located at 2619 Western Boulevard in the Southwest Planning District on a tract that is zoned Industrial-1, inside the corporate limits of Raleigh and has the P.I.N. # of 0793.07-68-6726.

To allow a telecommunication tower taller than 250 feet in any zoning district, the City Council must make the 14 findings as stated in §10-2145. With the requirement to record a plat which provides the subject property with public street frontage, staff has found that the site plan meets all required conditions for approval with the exception of condition #14 for which City Council may take into account the testimony at the hearing to make a final determination. The City Clerk has been notified of the request, and an Evidentiary Hearing is to be scheduled for September 2, 1997. Attached are the findings prepared by staff for City Council review.



George B. Chapman
Planning Director

GBC/mm

cc: City Clerk

STAFF FINDINGS

Special Use Permit to allow a telecommunication tower in all zoning districts except Conservation Buffer.

§10-2145(b) (1) Radio and television or similar reception for adjoining properties will not be disturbed or diminished.

FINDING: The applicants have stated that radio, television or similar reception for adjoining properties will not be disturbed or diminished because of the technical specifications of the Personal Communications Systems frequency as licensed and enforced by the FCC.

§10-2145(b) (2) The height of the tower does not exceed five hundred ten (510) feet.

FINDING: The applicants state that the proposed maximum tower height is 300 feet.

§10-2145(b) (3) The lighting of the tower does not exceed the minimum standard of the Federal Aviation Administration (FAA) for red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated 27 September, 1978, as the same may be amended.

FINDING: Applicants state that obstruction marking and lighting not required by FAA.

§10-2145(b) (4) The minimum yard setback from the outside dimensions of the tower, not from guy anchors, are as follows:

a. Twenty (20) feet from the property line of any adjoining lot or lot across a public street which is vacant and zoned a nonresidential district or any adjoining lot or lot across a public street which is developed without a dwelling, congregate care or congregate living structure, unless increased by subparagraph b. or c. below.

b. One hundred (100) percent of the tower height, but no less than fifty (50) feet, from the property line of either any lot which is developed at an average residential density of less than fifteen (15) dwelling units per acre or vacant lot located in a residential zoning district.

c. Fifty (50) percent of the tower height from the property line of any lot which is developed at an average residential density equal to or greater than fifteen (15) dwelling units per acre.

The setbacks required by subsections b. and c. above shall not be applicable to any residential dwelling(s) that is not a permitted use in the zoning district, or the residence of a caretaker or watchman accessory to as permitted industrial use.

For towers exceeding a height of two hundred fifty (250) feet, this setback may be reduced by the City Council upon a finding that the lesser setback will not be injurious to property or improvements in the affected area, but in no case shall the setback be reduced to less than fifty (50) percent of the tower height.

The provisions in this subsection are supplemental to the yard regulations in §10-2075 and do not lessen or diminish those regulations.

FINDING:

The proposed site plan conforms to all setback requirements and are as follows:

400.00'± from the south property line.

109.00'± from the east property line.

394.00'± from the west property line.

57.00'± from the north property line.

Because this proposed site is located in an area zoned Residential-20 along the southern property line, the tower setback is 100% of the tower height. The remaining zoning for the adjacent properties is as follows: Industrial-1 along the western property line, Shopping Center along the northern property line, Office and Institutional-1 along the eastern property line. The setbacks required for the nonresidential landuse and zoned properties is 20 feet.

§10-2145(b) (5)

The base of the tower and each guy anchor are surrounded by a fence or wall at least eight (8) feet in height unless the tower and all guy anchors are mounted entirely on a building over eight feet in height. Except for fence and wall entrances, all fences and walls shall be screened with plant material so that no more than two-thirds of the surface of the fence or wall is visible, within three (3) years after the erection of the structure, from a public street or from any adjoining lot which contains a dwelling, congregate care or congregate living structure, or is zoned a residential district.

FINDING:

Applicants state that this self supporting tower will be surrounded by an eight foot high chain link fence, topped with barbed wire, and existing vegetation of "hollywood junipers" will be used as